

## **REMARKS/ARGUMENTS**

The Applicants originally submitted Claims 1-21 in the application and added Claims 22-30 in a preliminary amendment. In a previous response and a preliminary amendment, the Applicants amended Claims 1-2, 8-9, 15-16, 22, 24 and 29, canceled Claim 23 without prejudice or disclaimer and added Claims 31-32. In the present response, the Applicants have amended Claim 22. The Applicants have not amended, canceled or added any other claims in the present response.

The Examiner indicates that dependent Claims 2, 9 and 16 include allowable subject matter. The Applicants believe that each of the pending claims are allowable. Accordingly, Claims 1-22 and 24-32 are currently pending in the application.

### **I. Rejection of Claims 1, 3-8, 10-15 and 17-21 under 35 U.S.C. §102**

The Examiner has rejected Claims 1, 3-8, 10-15 and 17-21 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,267,261 to Blakenley, *et al.* The Applicants respectfully disagree since Blakenley does not teach selecting one of at least two channels in accordance with updated channel information, based on at least one characteristic associated therewith and system configuration parameters, to allow modifying a transmission rate of a signal over a wireless communications network as recited in independent Claims 1, 8 and 15.

Blakenley is directed to an improved system for controlling handoffs in communications of a mobile station between cell base stations or sectors in a code division multiple access (CDMA) cellular communications system. (*See* column 1, lines 14-19.) Blakenley uses lists, for example, Neighbor Set, Active Set, Candidate Set, of pilot signals from base stations to provide a soft handoff between base stations for mobile stations. (*See* column 3, lines 26-44 and column 4, lines 36-39.)

The Active Set includes pilot signals that have signal strength above a certain threshold. (*See* column 4, lines 1-18.) The Examiner appears to equate the pilot signals of Blakeney to the channels as recited in independent Claims 1, 8 and 15. (*See* Examiner's Action, pages 2-3.) In Blakeney, the pilot signals are removed or added to the list based on monitoring the signal strengths and comparing the pilot signal strengths to the threshold. (*See* column 4, lines 1-18.)

Thus, Blakeney does not select a pilot signal by considering updated channel information based on a sensed channel characteristic and system configuration parameters. Instead, Blakeney teaches switching between base stations based only on the signal strength of pilot signals from the base stations. The Applicants do not find where Blakeney discloses selecting pilot signals from base stations based on updated channel information including a channel characteristic **and** system configuration parameters. Therefore, even assuming the pilot signals are channels as presently claimed, Blakeney, does not teach selecting one of at least two channels in accordance with updated channel information to allow modifying a transmission rate of a signal over a wireless communications network as recited in independent Claims 1, 8 and 15.

Accordingly, at least based on the above argument, Blakeney does not teach each element of independent Claims 1, 8 and 15. As such, Blakeney does not anticipate Claims 1, 8 and 15 and Claims dependent thereon. Thus, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 1, 3-8, 10-15 and 17-21 and allow issuance thereof.

## **II. Rejection of Claims 22, 24, 28 and 30 under 35 U.S.C. §102**

The Examiner rejected Claims 22, 24, 28 and 30 under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,122,291 to Robinson, *et al.* (Robinson). The Applicants respectfully

disagree since Robinson does not teach transmitting data across a communications network having multiple channels including establishing a bandwidth for transmission of the data based on a priority status thereof wherein the bandwidth is maximum when the priority status is high as recited in amended independent Claim 22.

Robinson is directed to communications systems and, more specifically, to an allocation of bandwidth for reception or transmission of information over a communication resource. (*See* column 1, lines 6-9.) Robinson teaches a communications system including a system control unit that stores a hierarchy of remote terminals for dynamic allocation of available bandwidth. (*See* column 4, lines 24-46.) In relation to any reduction of the established bandwidth for each remote terminal, services of the greater importance to that remote terminal are maintained above ancillary services. For example, services that are more important but have a substantially less bandwidth may be maintained while services requiring a greater bandwidth but less important may be surrendered. (*See* column 4, lines 46-57.) Thus, instead of establishing a bandwidth for transmission of the data based on a priority status thereof wherein the bandwidth is maximum when the priority status is high, Robinson establishes a bandwidth based on the priority of remote terminals and then, when the established bandwidth is reduced, selects services having a higher priority and smaller bandwidth for transmission. Robinson, therefore, does not teach each element of amended independent Claim 22.

Accordingly, Robinson does not anticipate independent Claim 22 and Claims 24, 28 and 30 which depend thereon. The Applicants, therefore, respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 22, 24, 28 and 30 and allow issuance thereof.

### **III. Rejection of Claims 25-27 under 35 U.S.C. §103**

The Examiner has rejected Claims 25-27 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of US Patent No. 6,122,291 to Frodigh, *et al.* and Claim 29 over Robinson in view of US Patent No. 6,122,291 to Felix, *et al.* The Applicants respectfully disagree.

As discussed above, Robinson does not teach each and every element of independent Claim 22. Furthermore, Robinson does not suggest each and every element of Claim 22 since Robinson is directed to altering bandwidth to accommodate demands on communication resources instead of establishing a bandwidth based on a priority status wherein the bandwidth is a maximum when the priority status is high and concluding if channels provide the established bandwidth. Accordingly, one skilled in the art would not be motivated from the teachings of Robinson to arrive at the present invention.

Neither Frodigh nor Felix has been cited to cure the deficiencies of Robinson but to teach the subject matter of dependent Claims 25-27 and 29, respectively. The cited combinations of Robinson and Frodigh or Felix, therefore, do not teach or suggest each and every element of independent Claim 22 and does not provide a *prima facie* case of obviousness of Claims 25-27 and 29 which depend thereon. Claims 25-27 and 29, therefore, are not unpatentable over the cited combination of Robinson in view of Frodigh or Felix. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 25-27 and 29 and allow issuance thereof.

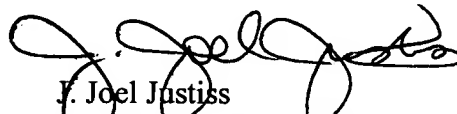
**IV. Conclusion**

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-22 and 24-32.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

HITT GAINES, PC

  
J. Joel Justiss  
Registration No. 48,981

Dated: 8/8/05

P.O. Box 832570  
Richardson, Texas 75083  
(972) 480-8800